II

111TH CONGRESS
1ST SESSION

S. 1383

To amend the Controlled Substances Act to prevent the abuse of dextromethorphan, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. DURBIN (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the Controlled Substances Act to prevent the abuse of dextromethorphan, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Dextromethorphan Abuse Reduction Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) When used properly, cough medicines that contain dextromethorphan have a long history of being safe and effective. But abuse of dextromethor-

phan at doses that exceed the recommended levels can produce hallucinations, rapid heart beat, high blood pressure, loss of consciousness, and seizures. The dangers multiply when dextromethorphan is abused with alcohol, prescription drugs, or narcotics.

(2) Dextromethorphan is inexpensive, legal, and readily accessible, which has contributed to the increased abuse of the drug, particularly among teenagers.

(3) Increasing numbers of teens and others are abusing dextromethorphan by ingesting it in excessive quantities. Prolonged use at high doses can lead to psychological dependence on the drug. Abuse of dextromethorphan can also cause impaired judgment, which can lead to injury or death.

(4) An estimated 1,700,000 teenagers (7 percent of teens) abused over-the-counter cough medicines in 2008.

(5) The Food and Drug Administration has called the abuse of dextromethorphan a ''serious issue'' and has said that while dextromethorphan, ''when formulated properly and used in small amounts, can be safely used in cough suppressant medicines, abuse of the drug can cause death as well as other serious adverse events such as brain dam-

age, seizure, loss of consciousness, and irregular heart beat.''

(6) In recognition of the problem, several retailers have voluntarily implemented age restrictions on purchases of cough and cold medicines containing dextromethorphan, and several manufacturers have placed language on packaging of cough and cold medicines alerting parents to the dangers of medicine abuse.

(7) Prevention is a key component of the effort to address the rise in the abuse of dextromethorphan and other legal medications. Education campaigns teaching teens and parents about the dangers of these drugs are an important part of this effort.

SEC. 3. SALES OF PRODUCTS CONTAINING DEXTROMETHORPHAN.

(a) SALES OF PRODUCTS CONTAINING DEXTROMETHORPHAN.—

(1) IN GENERAL.—Part D of title II of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

''SEC. 424. CIVIL PENALTIES FOR CERTAIN DEXTROMETHORPHAN SALES.

''(a) IN GENERAL.—

''(1) SALE.—

"(A) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly or intentionally sell, cause another to sell, or conspire to sell a product containing dextromethorphan to an individual under 18 years of age, including any such sale using the Internet.

"(B) FAILURE TO CHECK IDENTIFICATION.—If a person fails to request identification from an individual under 18 years of age and sells a product containing dextromethorphan to that individual, that person shall be deemed to have known that the individual was under 18 years of age.

"(C) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to an alleged violation of subparagraph (A) that the person selling a product containing dextromethorphan examined the purchaser's identification card and, based on that examination, that person reasonably concluded that the identification was valid and indicated that the purchaser was not less than 18 years of age.

''(2) EXCEPTION.—This section shall not apply to any sale made pursuant to a validly issued prescription.

''(3) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Attorney General shall promulgate regulations for Internet sales of products containing dextromethorphan to ensure compliance with this subsection. The Attorney General may issue interim rules as necessary to ensure that such rules take effect not later than 180 days after the date of enactment of this section.

''(b) CIVIL PENALTY.—

''(1) IN GENERAL.—The Attorney General may file a civil action in an appropriate United States district court to enforce subsection (a).

''(2) MAXIMUM AMOUNT.—Any person who violates subsection (a)(1)(A) shall be subject to a civil penalty in an amount—

''(A) not more than $1,000 for the first violation of subsection (a)(1)(A) by a person;

''(B) not more than $2,000 for the second violation of subsection (a)(1)(A) by a person; and

"(C) not more than $5,000 for the third violation, or a subsequent violation, of subsection (a)(1)(A) by a person.

"(3) EMPLOYEE OR AGENT.—A violation of subsection (a)(1)(A) by an employee or agent of a person shall be deemed a violation by the person as well as a violation by the employee or agent.

"(4) FACTORS.—In determining the amount of a civil penalty under this subsection for a person who is a retailer, a court may consider whether the retailer has taken appropriate steps to prevent subsequent violations, such as—

"(A) the establishment and administration of a documented employee training program to ensure all employees are familiar with and abiding by the provisions of this section; or

"(B) other actions taken by a retailer to ensure compliance with this section.

"(c) DEFINITIONS.—In this section—

"(1) the term 'identification card' means an identification card that—

"(A) includes a photograph and the date of birth of the individual; and

"(B) is—

''(i) issued by a State or the Federal Government; or

''(ii) considered acceptable for purposes of sections 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B)(1) of title 8, Code of Federal Regulations (as in effect on or after the date of the enactment of the Dextromethorphan Abuse Reduction Act of 2009); and

''(2) the term 'retailer' means a grocery store, general merchandise store, drug store, pharmacy, convenience store, or other entity or person whose activities as a distributor relating to products containing dextromethorphan are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.''.

(2) SENSE OF THE SENATE.—It is the sense of the Senate that—

(A) manufacturers of products containing dextromethorphan should continue the practice of including language on packages cautioning consumers about the dangers of dextromethorphan abuse; and

(B) retailers selling products containing dextromethorphan should implement appropriate safeguards to protect against the theft of such products.

(b) PREVENTION FUNDING.—

(1) PRESCRIPTION AND NONPRESCRIPTION DRUG ABUSE PREVENTION GRANTS.—

(A) IN GENERAL.—The Director of National Drug Control Policy shall provide grants to one or more eligible entities for the creation and operation of a nationwide education campaign directed at individuals under the age of 18 years and their parents regarding the prevention of abuse of prescription and nonprescription drugs (including dextromethorphan).

(B) ELIGIBLE ENTITY.—For purposes of subparagraph (A), the term ''eligible entity'' means an organization that—

(i) is a not-for-profit organization;

(ii) has broad national experience and a nationwide presence and capabilities;

(iii) has specific expertise and experience in conducting nationwide education campaigns;

(iv) has experience working directly with parents, teens, people in recovery, addiction scientists, and drug specialists to design drug education programs;

(v) has conducted research upon which to base the campaign specified in subparagraph (A);

(vi) has experience generating news media coverage related to drug prevention;

(vii) is able to secure pro bono media time and space to support the campaign specified in subparagraph (A); and

(viii) has a well-established national Internet presence targeting parents seeking information about drug prevention and intervention.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $4,000,000, for each of fiscal years 2010 through 2012 to carry out this paragraph.

(D) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this subsection shall be used to supplement, not supplant, Federal and non-Federal funds available for carrying out the activities described in this subsection.

(2) GRANTS FOR EDUCATION, TRAINING AND TECHNICAL ASSISTANCE TO COMMUNITY COALITIONS.—

(A) IN GENERAL.—The Director of National Drug Control Policy shall award a grant to the entity created by section 4 of Public Law 107–82, as amended by Public Law 109–469 (21 U.S.C. 1521 note), for the development and provision of specially tailored education, training, and technical assistance to community coalitions throughout the nation regarding the prevention of abuse of prescription and non-prescription drugs (including dextromethorphan).

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,500,000, for each of fiscal years 2010 through 2012 to carry out this paragraph.

(C) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this subsection shall be used to supplement, not supplant, Federal and non-Federal funds available for carrying out the activities described in this subsection.

(c) SUPPLEMENTAL GRANTS FOR COMMUNITIES WITH MAJOR PRESCRIPTION AND NONPRESCRIPTION DRUG ISSUES.—

(1) DEFINITIONS.—In this subsection—

(A) the term ''Administrator'' means the Administrator of the Substance Abuse and Mental Health Services Administration;

(B) the term ''drug'' has the meaning given that term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321);

(C) the term ''eligible entity'' means an organization that—

(i) before the date on which the organization submits an application for a grant under this subsection, has received a grant under the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.); and

(ii) has documented, using local data, rates of prescription or nonprescription drug abuse above national averages for comparable time periods, as determined by the Administrator (including appropriate consideration of the Monitoring the Future Survey by the University of Michigan);

(D) the term ''nonprescription drug'' has the meaning given that term in section 760 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379aa); and

(E) the term ''prescription drug'' means a drug described in section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)).

(2) AUTHORIZATION OF PROGRAM.—From amounts made available to carry out this subsection, the Administrator, in consultation with the Director of the Office of National Drug Control Policy, shall make enhancement grants to eligible entities to implement comprehensive community-wide strategies regarding the prevention of abuse of prescription and nonprescription drugs (including dextromethorphan).

(3) APPLICATION.—

(A) IN GENERAL.—An eligible entity seeking an enhancement grant under this subsection shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may require.

(B) CRITERIA.—As part of an application for a grant under this subsection, the Administrator shall require an eligible entity to submit a detailed, comprehensive, multisector plan for addressing abuse of prescription and nonprescription drugs (including dextromethorphan).

(4) USES OF FUNDS.—An eligible entity that receives a grant under this subsection shall use the grant funds for implementing a comprehensive, community-wide strategy that addresses abuse of prescription and nonprescription drugs (including dextromethorphan) in that community, in accordance with the plan submitted under paragraph (3)(B).

(5) GRANT TERMS.—A grant under this subsection—

(A) shall be made for a period of not more than 4 years; and

(B) shall not be in an amount of more than $100,000 per year.

(6) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this subsection shall be used to supplement, not supplant, Federal and non-Federal

funds available for carrying out the activities described in this subsection.

(7) EVALUATION.—A grant under this subsection shall be subject to the same evaluation requirements and procedures as the evaluation requirements and procedures required of the recipient of a grant under the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.).

(8) ADMINISTRATIVE EXPENSES.—Not more than 6 percent of a grant under this subsection may be expended for administrative expenses.

(9) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $4,000,000 for each of fiscal years 2010 through 2012 to carry out this subsection.

(d) DATA COLLECTION.—It is the sense of the Senate that Federal agencies and grantees that collect data on drug use trends should ensure that the survey instruments used by such agencies and grantees include questions to ascertain changes in the trend of abuse of prescription and nonprescription drugs (including dextromethorphan).

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 201(g) of the Controlled Substances Act (21 U.S.C. 811(g)) is amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2).

(2) TABLE OF CONTENTS.—The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91–513; 84 Stat. 1236) is amended by inserting after the item relating to section 423 the following:

''Sec. 424. Civil penalties for certain dextromethorphan sales.''.

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